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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,879	11/03/2003	James W. Wieder	W03-003	2878

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JAMES W. WIEDER
4276 HERMITAGE DR.
ELLICOTT CITY, MD 21042

EXAMINER
GREENE, DANIEL LAWSON

ART UNIT	PAPER NUMBER
3694	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/605,879	WIEDER, JAMES W.	
	Examiner	Art Unit	
	DANIEL L. GREENE	3694	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 July 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *163-205* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *163-205* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/31/08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. Claims 101-140 were pending. Since the last action on the merits, Applicant has added claims 142-205 and then subsequently cancelled claims 101-162. Accordingly, claims 163-205 are currently pending and have been examined on the merits as set forth below.

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/8/2008 and supplemental submission filed on 7/31/2008 have been entered.

Response to Arguments

3. Applicant's arguments filed 7/8/2008 with respect to the Admission of prior art set forth in section 5 of the previous Office action mailed 4/9/2008 have been fully considered but they are not persuasive.

A thorough review of Amendment D received 10/29/2007 provides no support for applicant's allegations that the Examiners contention has been overcome. There does not appear to be any argument of record made by applicant to support the alleged traversal of the admission of prior art. To ensure clarity, the original rejection is repeated below (and sustained herein):

> ***Admission of Prior Art under MPEP § 2144.03 [R-1] C***
> Because applicant failed to traverse the Examiner's assertion of what is common knowledge or well known in the art the following item(s) is/are, from this point forward, to be considered prior art:

> 5. From page 5 of the previous Office action "...the Examiner takes Official Notice that it was well known at the time of invention to one of ordinary skill that iTunes coupled with an iPod or other networked computers generated, consolidated and distributed musical compositions, playlists (including "Smart Playlists") and user usage data (such as "Ratings") to tailor Smart Playlists to the user at any device on the media network, and that customization and tracking information was recorded individually by each user's own iTunes Library."

A complete review of ALL applicant's arguments does not indicate a traversal of the specific limitations set forth above, i.e. that iTunes coupled with an iPod or other networked computers generated, consolidated and distributed musical compositions, playlists (including "Smart Playlists") and user usage data (such as "Ratings") to tailor Smart Playlists to the user at any device on the media network, and that customization and tracking information was recorded individually by each user's own iTunes Library.

In other words, it was known at the time of the invention to have a mobile device sync up with all of a users devices and update any changes, including playlists, additional music, rights to said additional music, preferences, etc. All of applicant's arguments are directed at how the inventions allegedly do no read on the claimed invention of how the music is selected, NOT the feature of networking interconnectivity between a single users multiple devices. (e.g. cell phone, pda, home desktop computer, laptop, etc., etc. etc.) to provide seamless access to digital information and users "preferences" ("preferences" including not only the playlists and ratings set to the music in iTunes, but all other "preferences" computerized devices allow for, i.e. login scripts, background colors or pictures, hot keys, etc., etc., etc.)

An adequate traversal must be directed towards the specific limitations being traversed, not generically towards a reference itself.

Accordingly since applicant has failed to adequately traverse the Examiners contention, it is again considered prior art from this point forward. An adequate traversal must be directed towards the specific limitations being traversed.

4. Applicant's arguments with respect to the previous claims have been considered but are moot in view of their cancellation and addition of new claims 163-205.

The new claims are similar enough and have been rejected for the same reasons as set forth below. The Examiner has considered ALL of applicant's arguments regarding the references and has expounded upon the rejections for applicant's convenience as set forth below.

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 101

6. Claims 163-202 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims do not require the use of technological arts and are therefore drawn to non-statutory subject matter. The claims are still able to be performed by a human as set forth more fully below and as such do not present patentable subject matter under 35 USC 101. The claims must be drafted in a manner such that the use of a technological art is imperative.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 163-205 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 7,146,329 B2 to Conkwright et al. (Conkwright) (Published as US 2002/0133490A1 on 9/19/2002) for the reasons set forth in section 12 of the previous Office action mailed 4/9/2008 as well as those set forth immediately hereafter.

Conkwright clearly discloses the invention set forth in claims 163, 181, 185 and 203, i.e. a method, system and computer medium for personalizing music or entertainment, the method comprising:

- capturing details of different control actions on pieces or compositions by a user; wherein said control actions affected the playback of pieces or compositions (Col. 40, lines 65+, "collecting event data associated with one set top box") ;
- determining automatically, for a plurality of pieces or compositions, a rating of said user for each piece or composition; wherein a said rating for a piece or composition is at least partially based on said details of different control actions (Col. 41, lines 1-12, "deriving at least one user model");
- updating automatically, said user's ratings using said details of different control actions by said user (Col. 41 lines 13-15, "storing the derived...user model"); and

- selecting automatically, at least one entertainment piece or composition for a user based on said updated user's ratings (Col. 41, lines 17-25, "selecting content...delivering the selected content...causing the selected content to be delivered).

Conkwright describes individual preferences in more detail starting at Col. 30, line 56.

Regarding claims 164 and 186 and the limitation wherein said control actions are user actions to repeat, replay, or to go-back-to a piece or composition that previously played, see for example, claim 2 in Col. 41, figure 20, Col. 6 lines 53-60, Col. 3 lines 52-56, Col. 4 lines 15-48, etc., wherein it is understood that "control actions" are equivalent to and connote the same meaning as "event data".

Regarding claims 165 and 187 and the limitation wherein said control actions are user actions to select a particular piece or composition for playback see for example, claim 2 in Col. 41, figure 20, Col. 6 lines 53-60, Col. 3 lines 52-56, Col. 4 lines 15-48, etc., wherein it is understood that "control actions" are equivalent to and connote the same meaning as "event data".

Regarding claims 166 and 188 and the limitation wherein said control actions are user actions to skip or forward- past the rest of a currently playing piece or composition see for example, claim 2 in Col. 41, figure 20, Col. 6 lines 53-60, Col. 3 lines 52-56, Col. 4 lines 15-48, etc., wherein it is understood that "control actions" are equivalent to and connote the same meaning as "event data".

Regarding claims 167 and 189 and the limitation wherein said control actions are user actions to stop a currently playing piece or composition; and initiate the play of another piece or composition see for example, claim 2 in Col. 41, figure 20, Col. 6 lines 53-60, Col. 3 lines 52-56, Col. 4 lines 15-48, etc., wherein it is understood that "control actions" are equivalent to and connote the same meaning as "event data" (This limitation is synonymous with changing the channel).

Regarding claims 168 and 190 and the limitation wherein a said user's rating is at least partially based on how quickly said user took control actions to stop a currently playing piece or composition, in-order to experience another piece or composition, see for example, Col. 2 lines 2-5 wherein it was known to "intentionally leave the television "on" to a certain channel to insure higher ratings..."

Regarding claims 169 ands 191 and the limitation wherein a said user's rating is at least partially based on how quickly said user took control action to avoid a currently playing piece or composition; after said user has experienced said avoided piece or composition, for at least a recognition-time, see for example, Col. 31, lines 55+.

Regarding claims 170 and 192 and the limitation wherein a said user's rating is at least partially based on how quickly said user took control action to avoid a playing piece or composition; wherein the sooner the user took an avoiding action, the greater the affect on the user's rating for the avoided piece or composition, see for example, Col. 31, lines 55+.

Regarding claims 171 and 193 and the limitation wherein a said user's rating for a piece or composition is at least partially based on a plurality of said user control actions that

occurred on a plurality of different occasions; wherein said control actions were applied to the same piece or composition, see for example, Col. 10 lines 27-37 wherein it is understood that the users behavior is monitored no matter how many times they access the same piece or composition.

Regarding claims 172 and 194 and the limitation wherein said control actions occur at a plurality of user devices; wherein said user's rating is at least partially based on said user's control actions that occurred at said plurality of user devices; wherein information about said user's control actions or ratings is automatically distributed across at least one network or communication path to said plurality of user devices see for example, Col.4 lines 34-48, Col. 9 lines 4-60, wherein it is understood that the user model from each device listed is "transmitted to the data center".

Regarding claims 173 and 195 and the limitation wherein said control actions occur at a plurality of user devices; wherein said user's rating is at least partially based on said user's control actions that occurred at said plurality of user's devices; wherein said selecting is at least partially coordinated, when said user switches between using different user devices of said plurality of user devices, see for example, Col.4 lines 34-48, Col. 9 lines 4-60.

Regarding claims 174 and 196 and the limitation wherein the more favorable a said user's rating for a piece or composition, the sooner the piece or composition will be selected again see for example, Col. 34, line 61 through Col. 35, line 40, “an advertiser typically selects a television or radio program which market research has shown to be

appealing to the target audience." Accordingly, the more a target audience appeals to a select program, the more it will be selected again.

Regarding claims 175 and 197 and the limitation wherein, when a said user's rating for a said piece or composition is below a defined level of preference, said piece or composition will not be selected again until at least a defined amount of time has elapsed from the prior selection, see for example, Col. 34, line 61 through Col. 35, line 40, "an advertiser typically selects a television or radio program which market research has shown to be appealing to the target audience..." Accordingly, the less a target audience appeals to a select program, the less chance it will be selected.

Regarding claims 176 and 198 and the limitation wherein a said piece or composition is not selected when a said user's rating for said piece or composition is below a defined level of preference, see for example, Col. 34, line 61 through Col. 35, line 40 "an advertiser typically selects a television or radio program which market research has shown to be appealing to the target audience...some advertisers...limit advertisements to specific markets in which their target audience is likely to live, thus increasing the cost effectiveness of the advertising." Accordingly, a piece or composition (commercial) will not be presented to a target audience if it is not appealing to the target audience.

Regarding claims 177 and 199 and the limitation wherein a history of details about individual said control actions is saved; wherein a said user's rating can be determined using said saved history of said user's control actions, see for example, Col. 9, lines 62+, "data center storage device", Col. 10, etc.

Regarding claims 178, 182, 200 and 204 and the limitation further comprising: playing a said selected piece or composition; when there are no pending user control actions available to be applied or satisfied, see for example, Col. 1 lines 1- Col. 2 line 68 wherein it is old and well known that television stations continue to provide content regardless of user control actions. That is, the station does not go off the air because no one is watching.

Regarding claims 179, 189, 201 and 205 and the limitation further comprising: playing automatically a sequence of said selected entertainment pieces or compositions; when there are no pending user control actions available to be applied or satisfied, see for example, Col. 1 lines 1- Col. 2 line 68 wherein it is old and well known that television stations continue to provide content regardless of user control actions. That is, the station does not go off the air because no one is watching.

Regarding claims 180, 184 and 202 and the limitation wherein a said user rating is an indication of the amount of a user's preference for a piece or composition, see for example, Col. 41 lines 34-36, i.e. claim 4, "wherein said derived user model is based on user interest".

Claim Rejections - 35 USC § 103

9. Claims 163-169, 171, 174-191, 193 and 196-205 are rejected under 35 U.S.C. 103(a) as being unpatentable over Admitted Prior Art (APA) in view of In re Venner, 120 USPQ 192 (CCPA 1958), In re Rundell, 9 USPQ 220 and Wahid, "How habits are formed by our mind".

APA discloses in, for example, paragraphs [0007]-[0017] that it is known for users to manually select their own entertainment sequences based on their own personal preferences. Further, APA sets forth the well known complications of transferring media from one area to another (i.e. home to car, car to work, etc.) for continuing enjoyment.

Resort may be had to case law to show that there is no novelty in simply automating a process previously done manually and/or combining a series of steps that were previously done individually.

See *In re Venner*, 120 USPQ 192 (CCPA 1958), In re Smith, 73 USPQ 394

"If a new combination of old elements is to be patentable, the elements must cooperate in such manner as to produce a new, unobvious, and unexpected result. It must amount to an invention",

In re Rundell, 9 USPQ 220

"It is not 'invention' to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result",

and *In re Wolfe*, 116 USPQ 443, 444 (CCPA 1961))

"It would seem scarcely necessary to point out that merely making a two-piece handle in one piece is not patentable invention because it is an obvious thing to do if deemed desirable"

APA discloses the invention set forth in claims 163, 181, 185 and 203, i.e. a method, system and computer medium for personalizing music or entertainment, the method comprising:

- capturing details of different control actions on pieces or compositions by a user; wherein said control actions affected the playback of pieces or compositions (this reads on a humans memory);

- determining automatically, for a plurality of pieces or compositions, a rating (how much a person likes something, i.e. a preference is determined when the person experiences the composition) of said user for each piece or composition; wherein a said rating for a piece or composition is at least partially based on said details of different control actions;

- updating automatically (remembering/formation of habits), said user's ratings using said details of different control actions by said user.

APA does not appear to expressly disclose selecting automatically, at least one entertainment piece or composition for a user based on said updated user's ratings (preferences).

Resort may be had to Wahid to show that the human mind is "internally programmed through association...to recognize patterns of stimulus...defined as a repeated form of something." and "habits are formed when we repeat certain actions frequent enough."

Accordingly, it would have been obvious to one of ordinary skill in the art to apply the old and well known method of human behavior, regarding the learning process and method of forming habits to arrive at a method of automatically selecting a composition based on users updated preferences (i.e. habits) as such is no more than an automation of a process typically performed by hand.

Regarding claims 164 and 186 and the limitation wherein said control actions are user actions to repeat, replay, or to go-back-to a piece or composition that previously played,

again, each of these actions is being monitored by the users brain and cannot be performed without active participation and recognition of the event.

Regarding claims 165 and 187 and the limitation wherein said control actions are user actions to select a particular piece or composition for playback, again, one must appreciate the teachings of Wahid wherein the human mind automatically monitors , logs and creates habits based upon repetitious actions.

Regarding claims 166 and 188 and the limitation wherein said control actions are user actions to skip or forward- past the rest of a currently playing piece or again, one must appreciate the teachings of Wahid wherein the human mind automatically monitors, logs and creates habits based upon repetitious actions.

Regarding claims 167 and 189 and the limitation wherein said control actions are user actions to stop a currently playing piece or composition; and initiate the play of another piece or composition again, one must appreciate the teachings of Wahid wherein the human mind automatically monitors , logs and creates habits based upon repetitious actions.

Regarding claims 168 and 190 and the limitation wherein a said user's rating is at least partially based on how quickly said user took control actions to stop a currently playing piece or composition, in-order to experience another piece or composition, see for example, Col. 2 lines 2-5 wherein it was known to "intentionally leave the television "on" to a certain channel to insure higher ratings..."

Regarding claims 169 ands 191 and the limitation wherein a said user's rating is at least partially based on how quickly said user took control action to avoid a currently playing

piece or composition; after said user has experienced said avoided piece or composition, for at least a recognition-time, see for example, Col. 31, lines 55+.

Regarding claims 171 and 193 and the limitation wherein a said user's rating for a piece or composition is at least partially based on a plurality of said user control actions that occurred on a plurality of different occasions; wherein said control actions were applied to the same piece or composition, again, Wahid clearly explains how the habits a reinforced by repetition and it is therefore obvious to utilize such a method for determining a rating as this is something the human mind does automatically everyday.

> Habit
>
> Habits are formed when we repeat certain action frequent enough.
> This is because our brain do pattern recognition and association, as described earlier.
> Since this is how habit is formed, then in order to get rid off certain habit we just need to make our brain to associate things that trigger our habit to something new. Off course all of us know this is easier said than done for adult.
>
> Our mind is programmed through senses and language, so these are also the channel how we can reprogram our mind to get rid off any habit. It is because of this that language, in the form of recorded Suggestions, Hypnosis Sessions or Auto-Suggestions, can be successfully used to associate ideas, concepts and beliefs to create healthy new behaviors if done correctly.

Regarding claims 174 and 196 and the limitation wherein the more favorable a said user's rating for a piece or composition, the sooner the piece or composition will be selected again see for example, paragraph 0016 of the specification as filed to show that APA clearly discloses the use of ratings to determine play sequence and that the higher the rating the greater the chance a selection will be played sooner rather than later.

Regarding claims 175 and 197 and the limitation wherein, when a said user's rating for a said piece or composition is below a defined level of preference, said piece or composition will not be selected again until at least a defined amount of time has elapsed

from the prior selection, see for example, paragraph 0014 of the specification as filed to show that the use of ratings in determining playback sequence is known and as such is an obvious thing to do. Applicant specifically names "Yahoo, Launchcast" which performs the exact same method applicant is attempting to claim.

Regarding claims 176 and 198 and the limitation wherein a said piece or composition is not selected when a said user's rating for said piece or composition is below a defined level of preference, see for example, , paragraph 0014 of the specification as filed to show that the use of ratings in determining playback sequence is known and as such is an obvious thing to do. Applicant specifically names "Yahoo, Launchcast" which performs the exact same method applicant is attempting to claim.

Regarding claims 177 and 199 and the limitation wherein a history of details about individual said control actions is saved; wherein a said user's rating can be determined using said saved history of said user's control actions, see for example, paragraph 16 of the specification as filed.

Regarding claims 178, 182, 200 and 204 and the limitation further comprising: playing a said selected piece or composition; when there are no pending user control actions available to be applied or satisfied, one must appreciate that radio/television stations continue to play music with and without listener guidance and input. That is, the station does not go off the air because no one is listening/watching.

Regarding claims 179, 189, 201 and 205 and the limitation further comprising: playing automatically a sequence of said selected entertainment pieces or compositions; when there are no pending user control actions available to be applied or satisfied, one must

appreciate that radio/television stations continue to play music with and without listener guidance and input. That is, the station does not go off the air because no one is listening/watching.

Regarding claims 180, 184 and 202 and the limitation wherein a said user rating is an indication of the amount of a user's preference for a piece or composition paragraph 16 of the specification as filed.

10. Claims 170 and 192 are rejected under 35 U.S.C. 103(a) as being unpatentable over APA as modified and applied to claims 163-169, 171, 174-191, 193 and 196-205 above, and further in view of "Name that Tune" from Wikipedia.

Regarding claims 170 and 192 APA as modified above does not appear to expressly disclose the limitation wherein a said user's rating is at least partially based on how quickly said user took control action to avoid a playing piece or composition; wherein the sooner the user took an avoiding action, the greater the affect on the user's rating for the avoided piece or composition.

"Name that Tune", is a notoriously old and well known popular television game show that tested the knowledge of music /songs of contestants and rewarded them for the shortest recognition time.

APA as modified above teaches an automated system for monitoring user's actions to provide automatic selection of compositions based on user's ratings.

At the time of the invention it would have been obvious to one of ordinary skill in the art to include a measure of how fast a user took action with regard to ratings and to have a higher rating for faster behavior as such is clearly an indication of an individuals ability to recognize and affect the playback of said composition.

11. Claims 172, 173, 194 and 195 are rejected under 35 U.S.C. 103(a) as being unpatentable over APA as modified and applied to claims 163-169, 171, 174-191, 193 and 196-205 above, and further in view of Official notice.

Regarding claims 172 and 194 APA as modified appears to disclose the limitation wherein said control actions occur at a plurality of user devices; wherein said user's rating is at least partially based on said user's control actions that occurred at said plurality of user devices; wherein information about said user's control actions or ratings is automatically distributed across at least one network or communication path to said plurality of user devices.

If applicant is of the opinion that APA does not consider synchronizing user preferences across multiple devices, then resort may be had to the explanation set forth in section 3 above regarding what is old and well known in the art to show that it is an obvious thing to do so for the benefits of, for example, not having to repeat actions of the user across multiple devices.

Regarding claims 173 and 195 and the limitation wherein said control actions occur at a plurality of user devices; wherein said user's rating is at least partially based on said user's

control actions that occurred at said plurality of user's devices; wherein said selecting is at least partially coordinated, when said user switches between using different user devices of said plurality of user devices, again see the explanation in section 3 above to show that such is an old and well known thing to do and as such would be obvious to do so in the instant invention.

12. Claims 163-169, 171, 174-191, 193 and 196-205 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conkwright as applied to claims 163-169, 171, 174-191, 193 and 196-205 above, and further in view of either Cohen or Fanning.

If applicant is of the opinion that Conkwright does not expressly disclose that the control actions are user actions to "repeat; replay; or go-back to" a piece or composition that previously played, then resort may be had to either Cohen or Fanning to show it is known in the art to utilize such.

Cohen and Fanning disclose that it is known in the art to utilize playlists, last played and play count data for determining when to "randomly play your most recently listened-to tracks." (Fanning, page 1, second paragraph).

At the time of the invention it would have been obvious to one of ordinary skill in the art to utilize the teachings of Fanning and Cohen and to apply them to Conkwright for the benefits of allowing Conkwright to accurately monitor the actions of a user as such is no more than another means of collecting data utilized by the Conkwright invention.

Regarding claims 171, 174-177, 193 and 196-199 see at least Fanning, "My Rating". Ratings are used to, for example, aid in determining the frequency of "automatic" playback based on playcount, last played, etc.

At the time of the invention it would have been obvious to one of ordinary skill in the art to utilize the teachings of Fanning and Cohen and to apply them to Conkwright for the benefits of allowing Conkwright to more accurately monitor the actions of a user as such is no more than another means of "collecting data" utilized by the Conkwright invention.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL L. GREENE whose telephone number is (571)272-6876. The examiner can normally be reached on Mon-Thur.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. L. G./
Examiner, Art Unit 3694
2008-09-29

/James P Trammell/
Supervisory Patent Examiner, Art Unit 3694